

ORIGINAL

NEW APPLICATION



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BEFORE THE
ARIZONA CORPORATION COMMISSION

PETITION OF)
YMAX COMMUNICATIONS CORP.)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER)

DOCKET NO.

T-20434A-12-0502

PETITION FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER

YMax Communications Corp. ("YMAX", "Applicant" or the "Company"), pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the "Act")¹ and Sections 54.101 through 54.207 of the Rules of the Federal Communications Commission ("FCC"),² and the rules and regulations of the Arizona Corporation Commission, hereby applies to the Arizona Corporation Commission ("Commission") for Designation as an Eligible Telecommunications Carrier ("ETC") throughout Qwest Corporation d/b/a/ CenturyLink QC service areas (the "Designated Service Area") for the purpose of receiving universal service support. The Company is seeking only low income support, and is not requesting high cost support. As demonstrated below, YMAX satisfies all of the statutory and regulatory requirements for designation as an ETC in the Designated Service Area, including the Commission's ETC Rules and the new requirements outlined in the FCC's *Lifeline and Link Up Reform Order*.³ Furthermore, designation of YMAX as an ETC in the Designated Service Area will serve the

¹ 47 U.S.C. § 214(e)(2).

² 47 C.F.R. §§ 54.101-54.207.

³ *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) ("Lifeline and Link Up Reform Order").

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public interest. Accordingly, YMAX respectfully requests that the Commission grant this Petition.

All correspondence, communications, pleadings, notices, orders and decisions relating to this Petition should be addressed to:

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I. Background

1. YMAX is a Delaware Corporation.⁴ A copy of the Company's Certificate of Incorporation is on file with the Commission and incorporated herein by reference. The Company was issued a Certificate of Convenience and Necessity authorizing it to operate as a competitive provider of telecommunications services, providing resold long distance and facilities-based basic services within the state of Arizona in Docket No. T-20434A-05-0900 on June 6, 2007. The principal office of the Company is located at 5700 Georgia Ave, West Palm Beach, Florida 33405. The Company will provide local exchange services in the Designated

⁴ The Company was incorporated in the State of Delaware on May 24, 2005

Service Area using either its own facilities or a combination of its own facilities and resale of another carrier's services.

2. As set forth in Section 214(e)(2) of the Act, the Commission "shall upon its own motion or upon request designate a common carrier that meets the requirements of [Section 214(e)(1)] as an eligible telecommunications carrier for a service area designated by the State commission."⁵ Upon designation as an ETC, the carrier shall be eligible to receive universal support in accordance with Section 254 of the Act.⁶

3. The requirements for designation as an ETC set forth in Section 214(e)(1) are that the carrier must:

- (A) offer the services that are supported by Federal universal support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (B) advertise the availability of such services and the charges therefore using the media of general distribution.⁷

II. YMAX Satisfies the Requirements for Designation as an ETC to Serve the Designated Service Area

4. YMAX is a common carrier as that term is defined in the Act.⁸ The Company will provide the supported services in the Designated Service Area.

⁵ 47 U.S.C. § 214(e)(2); *see* 47 C.F.R. § 54.201(b) (FCC Rules citing the Act's requirements).

⁶ 47 U.S.C. § 214(e)(1).

⁷ *Id.*

⁸ *See* 47 U.S.C. § 153(10) ("the term 'common carrier' or 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy").

5. YMAX will offer all of the supported services enumerated under Section 254(c) using either its own facilities or a combination of its own facilities and resale of another carrier's services. Accordingly, the Company satisfies the requirement set forth in Section 214(e)(1)(A).

6. The services that are supported by Federal universal support mechanisms under section 254(c) are enumerated at 47 C.F.R. § 54.101(a). These services are:

a) Voice grade access to the public switched telephone network (PSTN).

"Voice grade access" is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. YMAX is able to originate and terminate telephone service for all of its subscribers;

b) Local usage. As part of the voice grade access to the PSTN, an ETC must provide minutes of use for local service at no additional charge to end-users. The Company's service includes unlimited local usage that allows customers to originate and terminate calls within the local calling area without incurring toll charges;

c) Access to emergency services. "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems. The Company will provide its customers with access to these services;

- d) Toll limitation for qualifying low-income consumers. Toll Blocking allows customers to block the completion of outgoing toll calls. Toll Control allows the customer to limit the dollar amount of toll charges a subscriber can incur during a billing period. YMAX provides qualifying Lifeline customers with access to toll limitation.⁹ The Company will seek toll limitation service ("TLS") reimbursement from the USF;
- e) While no longer required by 47 C.F.R. § 54.101(a), YMAX provides dual tone multi-frequency ("DTMF") signaling to expedite the transmission of call set up and call detail information throughout the network, single party service for the duration of each telephone call and not multi-party (or "party-line") services, access to operator services, the ability to make interexchange, or long distance, telephone calls, and access to directory assistance services.

7. YMAX will advertise the availability of the above-referenced services and the charges for those services in the Designated Service Area using media of general distribution and in a manner reasonably designed to reach those likely to qualify for those services, as required by FCC Rules.¹⁰ Accordingly, the Company satisfies the requirement set forth in Section 214(e)(1)(B).

III. Area for Which ETC Designation Is Requested

⁹ On December 30, 1997, the FCC issued an order clarifying its definition of "toll limitation" services as either toll blocking or toll control and requires carriers to offer only one, not necessarily both, of these services to be designated as an ETC.

¹⁰ See 47 C.F.R. § 54.201(d)(2).

8. YMAX requests ETC designation throughout all CenturyLink exchanges. YMAX does not seek certification as an ETC in any areas served by rural telephone companies.

IV. YMAX Satisfies the Additional Requirements for Designation as an ETC

9. In accordance with 47 C.F.R. § 54.202(a)(1)(i), Applicant commits to comply with the service requirements applicable to the support that it receives. As a common carrier seeking designation as an ETC for low-income support only, Applicant is not required to submit a five-year network improvement plan.¹¹

10. An ETC Applicant must demonstrate its ability to remain functional in emergency situations (47 CFR §54.202(a)(2)). Since Applicant is providing service to its customers through the use of its own redundant facilities, Applicant will provide to its customers the same ability to remain functional in emergency situations as currently provided by the ILECs to their own customers, including access to a reasonable amount of back-up power to ensure functionality without an external power source, rerouting of traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations.

11. An ETC Applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards (47 C.F.R § 54.202(a)(3)). Applicant will satisfy all such standards. As part of its certification requirements for providing local exchange services, Applicant must abide by the service quality and consumer protection rules. In addition, Applicant commits to reporting information on an annual basis consistent with 47 C.F.R. § 54.422.

¹¹ See *Lifeline and Link Up Reform Order* at ¶ 386; see also 47 C.F.R. § 54.202(a)(1)(ii).

12. FCC Rules no longer require an applicant for ETC status to acknowledge that the FCC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.¹²

13. An applicant for ETC designation is no longer required to demonstrate that it offers a local usage plan that is "comparable" to the plan offered by the ILEC in the relevant service territory.¹³ Nevertheless, Applicant will offer a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation. Applicant will offer a local usage plan with unlimited calling within the customer's local calling area for a flat monthly fee with the same calling scope as the underlying carrier(s).

14. In accordance with 47 C.F.R. § 54.202(a)(4), Applicant demonstrated its financial and technical capabilities in Docket No. T-20434A-05-0900 referenced above.

15. The Company will provide reduced billing to Lifeline-eligible customers throughout its designated service area. The reduction will include the maximum federal Lifeline subsidy amount, plus any state funds if available.

16. YMAX will certify a customer's initial and annual eligibility for Lifeline in accordance with 47 C.F.R. § 54.410.

17. In 47 C.F.R. 54.422, the FCC has identified certain annual reporting requirements in connection with the annual certification of ETCs as follows:

- (a)(1) The company name, names of the company's holding company, operating companies and affiliates, and any branding (a "dba," or "doing-business-as company" or brand designation) as well as relevant universal service identifiers for each such entity by Study Area Code. For purposes of this paragraph, "affiliates" has the meaning set forth in section 3(2) of the Communications Act of 1934, as amended; and

¹² See *id.*

¹³ See *Lifeline and Link Up Reform Order* at page 208, revised § 54.202(a).

- (2) Information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.
- (b)(1) Detailed information on any outage in the prior calendar year, as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration for each service area in which the eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect
 - (i) At least ten percent of the end users served in a designated service area; or
 - (ii) A 911 special facility, as defined in 47 CFR 4.5(e).
 - (iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:
 - (A) The date and time of onset of the outage;
 - (B) A brief description of the outage and its resolution;
 - (C) The particular services affected;
 - (D) The geographic areas affected by the outage;
 - (E) Steps taken to prevent a similar situation in the future; and
 - (F) The number of customers affected.
- (2) The number of complaints per 1,000 connections (fixed or mobile) in the prior calendar year;
- (3) Certification of compliance with applicable service quality standards and consumer protection rules;
- (4) Certification that the carrier is able to function in emergency situations as set forth in § 54.202(a)(2).

YMAX is committed to comply with all of the applicable annual reporting requirements that are required of it as a recipient of low-cost support, and in the event it becomes eligible for high cost support, will comply with 47 CFR 54.313, including the requirement to provide a five-year spending plan.

In addition, the Company will comply with all requirements for expanded eligibility criteria, certification, verification and recordkeeping requirements in ACC Decision No. 67941. YMAX will make the necessary payments on behalf of its Arizona customers to the federal USF and to the Arizona USF, as required in A.A.C. R14-2-1204(A) and (B).

V. Granting YMAX's Petition Will Serve the Public Interest

18. Congress requires that the Commission grant competitive ETC applications in non-rural areas.¹⁴ No specific public interest test is mentioned, as is the case for areas served by rural telephone companies.¹⁵ Thus, the Act provides that the Commission "shall" designate YMAX as an ETC upon finding that the company meets the requirements of Section 54.101(a) and Section 54.202(a) of the FCC's Rules (47 C.F.R. § 54.101(a) and 47 C.F.R. § 54.202(a)).

19. Grant of the Company's Petition will serve the public interest and the market as a whole by promoting additional deployment of its unique service offering to the unserved and underserved exchanges in the Designated Service Area and will allow the Company to participate in and offer Lifeline to qualifying consumers throughout these same exchanges. As relevant to the Commission's public interest inquiry, the Company's presence will undeniably include a benefit of increased customer choice, as its service is unique, and serves a specific sector of the public who might well not otherwise be able to obtain wire line service from traditional providers.

20. The unique advantages and disadvantages of the Company's service offering are as follows:

The services are offered to customers on a monthly basis. Services are provided without

¹⁴ See 47 U.S.C. 214(e)(2).

¹⁵ See *Id.*

requiring a security deposit or gaining credit worthiness. Customers have the opportunity to choose products based on current needs and change products if necessary on a monthly basis without incurring large costly fees. The Company's offering provides long distance calling which eliminates the billing of additional monthly fees. Services can be discontinued simply by nonpayment of the next month's services without penalty or disconnection fees.

21. A central purpose of the Telecommunications Act of 1996 was to "promote competition and reduce regulation ... [thereby securing] lower prices and higher quality services ... and encourage the rapid deployment of new telecommunications technologies."¹⁶ Designation of YMAX as an ETC would further these goals. Granting ETC status to YMAX would allow the Company to obtain federal universal service support, which it will use to offer innovative telecommunications services at competitive prices to consumers in the Designated Service Area.

22. YMAX will publicize the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for those services. Accordingly, more low-income Arizona residents will be made aware of the opportunities afforded to them under the Lifeline program and will be able to take advantage of those opportunities by subscribing to the Company's service.

23. Since YMAX's service is of particular interest to credit-challenged customers—many of whom are low income—who generally cannot obtain service from the incumbent carrier, the granting of ETC status is clearly in the public interest; access to Lifeline can be critically important to a significant portion of the eligible low income consumers. To Applicant's knowledge, Lifeline services are not being sufficiently advertised and made

available to eligible low income consumers in the Designated Service Area. Statistics suggest that there are many eligible customers who are not yet aware of the programs. According to the best data available to Applicant, as of December 31, 2010, only between 10-20% of consumers eligible for Lifeline Services in the State of Arizona were being provided such services.¹⁷ When additional carriers enter the market with programs designed specifically for such customers, it increases the likelihood that eligible customers will become generally aware of these valuable options for telecommunications service.

24. Applicant hereby asserts its willingness and ability to comply with all the rules and regulations that the Commission may lawfully impose upon Applicant's provision of service contemplated by this Petition. Upon Commission request, Applicant is prepared to answer questions or present additional testimony or other evidence about its services within the state.

25. Applicant does not have any pending action or final unsatisfied judgment or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of the Petition.

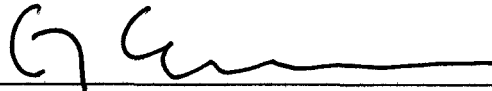
26. Applicant is a contributor to and in good standing with the Universal Service Fund and does not have any annual reports or assessment fees that are overdue, but is not drawing from the fund since it cannot receive universal service funds until it is designated an ETC.

¹⁶ The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 56 (1996).


VI. Relief Requested

For the foregoing reasons, YMAX respectfully requests that the Commission grant its Petition and Designate the Company as an Eligible Telecommunications Carrier for the Designated Service Area.

Respectfully submitted this 28th day of December, 2012.



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 , Signed on Behalf of

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¹⁷ See attached Exhibit 2, 2010 Lifeline Participation Rates by State, which was obtained from the Universal Service Administrative Company ("USAC"), an independent not-for-profit corporation designated as the administrator of the federal Universal Service Fund by the FCC.

List of Exhibits

Exhibit 1 Certification

Exhibit 2 2010 Lifeline Participation Rates by State

EXHIBIT 1

Certification

State of Florida


County of Palm Beach

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Certification

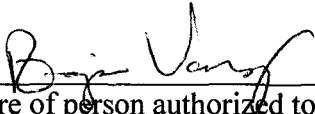
Personally appeared before the undersigned, an officer duly authorized to administer oaths, Peter Russo, who first being duly sworn, deposes and states that he is the Chief Financial Officer of YMax Communications Corp., Applicant in this application, and has read the same and knows the contents thereof, and confirms that the statements made herein are true to the best of his knowledge and belief.

Dated: 12/18/12


Peter Russo, Chief Financial Officer

Subscribed and sworn to before me this 18 day of Dec 2012.

(Notary Seal)


(Signature of person authorized to administer oath)

My Commission Expires: 9-14-2015



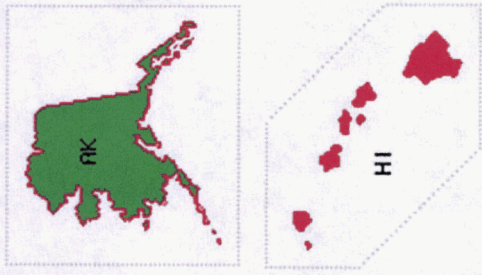
BENJAMIN VANDERPLOEG
NOTARY PUBLIC
STATE OF FLORIDA
Comm# EE130289
Expires 9/14/2015

AZ ETC app

EXHIBIT 2

2010 Lifeline Participation Rates by State

- - Below 10%
- - 10% - 20%
- - 20% - 50%
- - Above 50%



Due to the intricacy and range of criteria that are used to determine eligibility for the Lifeline program and the limitations of the data used, the methodology employed to create this map involves several estimates, assumptions, simplifications, and omissions. Therefore, the rates generated on this map should be treated as estimates only.